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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,049	04/10/2004	Ronald John Rosenberger		2242

7590 10/16/2007  
Ronald Rosenberger  
506 Sterling St.  
Newtown, PA 18940

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 10/16/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/822,049	<b>Applicant(s)</b> ROSENBERGER, RONALD JOHN	
	<b>Examiner</b> Steven D. Maki	<b>Art Unit</b> 1791	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 13 July 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Attachment to Notification of Non-Compliant Appeal Brief.

**Attachment to Notification of Non-Compliant Appeal Brief**

In the final office action dated 9-8-06, claims 1, 4-10, 12-13 and 16-17 were rejected under 35 U.S.C. 102(b) as being anticipated by Great Britain 584 (GB 2,243,584). With respect to this rejection, the Appeal Brief filed 7-13-07 presents only arguments for patentability for claim 1 as amended in the after final amendment filed 12-8-06, which was not entered. On page 2 of the Appeal Brief filed 7-13-07, appellant states: "... the claims stand for the present Appeal in the form they were amended and canceled in the Amendment and Response filed June 14, 2006 ...". On page 12 of Appeal Brief filed 7-13-07, appellant presents a copy of claim 1 on appeal. Appellant's copy of claim 1 on appeal contains the same wording as the extensively amended claim 1 presented in the response filed June 14, 2006. Appellant's copy of claim 1 on appeal fails to contain the language of "incorporated into said insert, o-ring or plug". Since appellant has failed to present any arguments for patentability for claim 1 as worded in the amendment filed June 14, 2006, appellant appears to admit that claim 1 on page 12 of the Appeal Brief filed July 13, 2007 is anticipated by Great Britain 584 (GB 2,243,584). In other words, appellant's Appeal Brief filed July 13, 2007 raises considerable confusion as to which claim 1 is to be reviewed on appeal. Appellant's statement of the amendments and appellant's copy of claim 1 on pages 2 and page 12 of the Appeal Brief filed 7-13-07, respectively, indicate that claim 1 of the amendment filed 6-16-06 is to be reviewed on appeal whereas appellant's arguments on pages 5-11 of the Appeal Brief filed 7-13-07 indicate that claim 1 of the non-entered after final amendment filed 12-8-06 is to be reviewed on appeal. In order to decide the merits of

appellant's appeal, the Board of Patent and Appeals and Interferences must know which claim 1 is to be reviewed on appeal. Correction is required.

The Appeal Brief filed 7-13-07 does not include a statement identifying the status of claims 18-20.

The Appeal Brief filed 7-13-07 does not include a statement regarding the after final amendment filed 2-8-07.

The Appeal Brief filed 7-13-07 does not include a concise statement of each ground of rejection presented for review. On page 4 of the Brief, the statement of grounds of rejection 1, 4, 5 and 7 is incorrect. In other words, a concise statement of the grounds of rejection set forth in paragraphs 2, 7, 8 and 10 of the final rejection dated 9-8-06 has not been presented for review. EXAMPLE: Page 4 of the Appeal Brief filed 7-13-07 fails to state that claim 1 in addition to claims 4-10, 12-13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain 584 in view of Korea (2004029611), Japan 873 (JP 2002-114873) or German 356 (DE 2949356). ANOTHER EXAMPLE: Page 4 of the Appeal Brief filed 7-13-07 fails to state that claim 1 in addition to claims 5-10 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 873 (JP 2002-114873) in view of French 013 (FR 2800013), Canada 958 (CA 547,958) or Japan 908 (JP 11-151908). ANOTHER EXAMPLE: Claims 6-9 and 16 were rejected instead of objected under 35 USC 112, second paragraph. ANOTHER EXAMPLE: With respect to item 7 on page 4 of the Appeal Brief filed 7-13-07, claims 4 and 13 were not rejected "... and further in view of Berliner". See page 8 of the office action dated 9-8-06, which states: "Claims 4 and 13

are rejected ... and further in view of French 340 (FR 1498340). ANOTHER EXAMPLE: With respect to 35 USC 112, second paragraph, the examiner has not asserted that "...the use of the term 'groove, channel or device: is confusing, and suggests change to 'void comprises'". The inclusion of this incorrect assertion in the Appeal Brief filed 7-13-07 is contrary to MPEP 1205.02 part (vi) which states: "The statement cannot include any argument concerning the merits of the ground of rejection presented for review." It is also noted that item 2 on page 4 of the Appeal Brief filed 7-13-07, which mischaracterizes the examiner's position, is an objection instead of a rejection and is therefore not an appealable issue.

MPEP 1205.02 states: "37 CFR 41.37(c)(2) prohibits the inclusion in a brief of any new or non-admitted amendment, affidavit or other evidence." The Brief includes language (e.g. "incorporated") from the non-admitted amendment filed 12-8-06. See for example pages 5 and 6 of the Brief filed 7-13-07. The only specific argument presented for "Argument 3" (the 102 rejection over Great Britain 584) relies upon the language in the non-admitted after final amendment filed 12-8-06 whose inclusion in the Brief is prohibited by 37 CFR 41.37(c)(2).

It is noted that MPEP 1205.02 also states: "An appellant's brief must be responsive to every ground of rejection stated by the examiner that the appellant is presenting for review in the appeal. If a ground of rejection stated by the examiner is not addressed in the appellant's brief that ground of rejection will be summarily sustained". The Appeal Brief filed 7-13-07 (pages 5-6) is not responsive to the 102 rejection over Great Britain 584 since the only specific argument presented for

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"Argument 3" (the 102 rejection over Great Britain 584) relies upon the language in the non-admitted after final amendment filed 12-8-06.

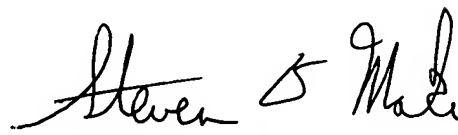
The Appeal Brief filed 7-13-07 does not include a correct copy of the claims involved in the appeal. Although the copy of claim 1 on page 12 of the Appeal Brief filed 7-13-07 is a correct copy of claim 1 of the amendment filed 6-16-06, the copy of claim 2 on page 12 of the Brief omits "at least one pheromone".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven D. Maki  
October 13, 2007

  
STEVEN D. MAKI 10-13-07  
PRIMARY EXAMINER